

REFERENCE TITLE: cold case reporting; victim reports

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

# **SB 1459**

Introduced by

Senators Huppenthal, Pearce: Burton Cahill, Gray L, McCune Davis,  
Verschoor

AN ACT

AMENDING SECTIONS 13-4221 AND 13-4405, ARIZONA REVISED STATUTES; RELATING TO CRIME VICTIMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2       Section 1. Section 13-4221, Arizona Revised Statutes, is amended to  
3 read:

4           13-4221. **Preservation of biological evidence; retention period;**  
5           annual report; definitions

6       A. Notwithstanding any other law, the appropriate governmental entity  
7 shall retain all identified biological evidence that is secured in connection  
8 with a felony sexual offense or homicide for:

9           1. The period of time that a person who was convicted of a felony  
10 sexual offense or homicide remains incarcerated for that offense or until the  
11 completion of the person's supervised release.

12           2. A cold case, fifty-five years or until a person is convicted of the  
13 crime and remains incarcerated or under supervised release for that offense.

14       B. The governmental entity shall preserve the evidence for the period  
15 of time prescribed in subsection A of this section in a condition that is  
16 suitable for deoxyribonucleic acid testing.

17       C. Evidence retained pursuant to this section shall be made available  
18 for deoxyribonucleic acid testing pursuant to section 13-4240.

19       D. The government entity that investigates the crime may establish  
20 procedures for retaining probative samples of the biological evidence and  
21 disposing of bulk evidence that do not affect the suitability of the  
22 probative sample for deoxyribonucleic acid testing. The government entity  
23 responsible for retaining the samples shall obtain approval from the county  
24 attorney or attorney general before disposal of any bulk evidence. Before  
25 the disposal of any bulk evidence, reasonable efforts shall be made to  
26 provide written notice to the victim.

27       E. This section does not preclude a governmental entity from disposing  
28 of evidence in a case in which a conviction has been obtained after the  
29 expiration of the defendant's sentence. Under any other circumstance, the  
30 governmental entity may dispose of physical evidence after the conclusion of  
31 the convicted defendant's direct appeal and first postconviction relief  
32 proceeding or after the time for initiating the direct appeal and first  
33 postconviction relief proceeding has expired, with the agreement of the  
34 county attorney or the attorney general and then, ~~UPON~~ ON written notice to  
35 the defendant, any counsel of record and the victim if no other law requires  
36 that biological evidence be preserved or retained.

37       F. This section does not limit a governmental entity's discretion  
38 concerning the conditions under which biological evidence is retained,  
39 preserved or transferred among different entities if the evidence is retained  
40 in a condition that is suitable for deoxyribonucleic acid testing.

41           **G. EACH YEAR EVERY LAW ENFORCEMENT AGENCY SHALL REPORT TO THE COUNTY**  
42 **ATTORNEY OF THE COUNTY IN WHICH THE COLD CASE IS ALLEGED TO HAVE OCCURRED THE**  
43 **NUMBER OF COLD CASES THAT IT IS RESPONSIBLE FOR INVESTIGATING AND THE LENGTH**  
44 **OF TIME THAT EACH CASE HAS BEEN CLASSIFIED AS A COLD CASE. ON REQUEST OF THE**

1 VICTIM, THE LAW ENFORCEMENT AGENCY ANNUALLY SHALL REVIEW WITH THE VICTIM OR  
2 THE VICTIM'S LAWFUL REPRESENTATIVE THE STATUS OF THE COLD CASE INVESTIGATION.

3 ~~G.~~ H. For the purposes of this section:

4 1. "Biological evidence" includes a sexual assault forensic  
5 examination kit, semen, blood, saliva, hair, skin tissue or other identified  
6 biological material.

7 2. "Cold case" means a homicide or a felony sexual offense that  
8 remains unsolved for one year or more after being reported to a law  
9 enforcement agency and that has no viable and unexplored investigatory leads.

10 Sec. 2. Section 13-4405, Arizona Revised Statutes, is amended to read:

11 **13-4405. Information provided to victim by law enforcement  
12 agencies**

13 A. As soon after the detection of a criminal offense as the victim may  
14 be contacted without interfering with an investigation or arrest, the law  
15 enforcement agency that has responsibility for investigating the criminal  
16 offense shall provide the victim with a multicopy form:

17 1. That allows the victim to request or waive applicable rights to  
18 which the victim is entitled, on request, under this article.

19 2. That provides the victim a method to designate a lawful  
20 representative if the victim chooses pursuant to section 13-4403, subsection  
21 A or section 13-4404.

22 3. That provides notice to the victim of all of the following  
23 information:

24 (a) The victim's right under the victims' bill of rights, article II,  
25 section 2.1, Constitution of Arizona, to be treated with fairness, respect  
26 and dignity and to be free of intimidation, harassment or abuse throughout  
27 the criminal or juvenile justice process.

28 (b) The availability, if any, of crisis intervention services and  
29 emergency and medical services and, where applicable, that medical expenses  
30 arising out of the need to secure evidence may be reimbursed pursuant to  
31 section 13-1414.

32 (c) In cases of domestic violence, the procedures and resources  
33 available for the protection of the victim pursuant to section 13-3601.

34 (d) The names and telephone numbers of public and private victim  
35 assistance programs, including the county victim compensation program and  
36 programs that provide counseling, treatment and other support services.

37 (e) The police report number, if available, other identifying case  
38 information and the following statement:

If within thirty days you are not notified of an arrest in your  
case, you may call (the law enforcement agency's telephone  
number) for the status of the case.

(f) Whether the suspect is an adult or juvenile, a statement that the  
victim will be notified by the law enforcement agency at the earliest  
opportunity after the arrest of a suspect.

1                 (g) If the suspect is an adult and has been arrested, the victim's  
2 right, on request, to be informed of the suspect's release, of the next  
3 regularly scheduled time, place and date for initial appearances in the  
4 jurisdiction and of the victim's right to be heard at the initial appearance  
5 and that, to exercise these rights, the victim is advised to contact the  
6 custodial agency regarding the suspect's release and to contact the court  
7 regarding any changes to the initial appearance schedule.

8                 (h) If the victim chooses to exercise the right to be heard through a  
9 written statement, how that statement may be submitted to the court.

10                 (i) That the victim or the immediate family member of the victim, if  
11 the victim is killed or incapacitated, has the right to receive one copy of  
12 the police report, **INCLUDING ANY SUPPLEMENTS TO THE REPORT**, from the  
13 investigating law enforcement agency at no charge pursuant to section 39-127.

14                 B. If at the time of contact with a law enforcement agency the victim  
15 is physically or emotionally unable to request or waive applicable rights,  
16 the law enforcement agency shall designate this on the multicopy form and the  
17 entities that may be subsequently affected shall presume that the victim  
18 invoked the victim's right to request applicable rights to which the victim  
19 is entitled, on request, unless the victim later waives those rights.

20                 C. The law enforcement agency shall submit a copy of the victim's  
21 request or waiver of preconviction rights form to the custodial agency and a  
22 copy to the prosecutor if a suspect is arrested, at the time the suspect is  
23 taken into custody. If there is no arrest, the form copies shall be  
24 submitted to the prosecutor at the time the case is otherwise presented to  
25 the prosecutor for review. The prosecutor shall submit a copy of the  
26 victim's request or waiver of preconviction rights form to the departments or  
27 sections of the prosecutor's office, if applicable, that are mandated by this  
28 article to provide victims' rights services on request.

29                 D. If the suspected offender is cited and released, the law  
30 enforcement agency responsible for investigating the offense shall inform the  
31 victim of the court date and how to obtain additional information about the  
32 subsequent criminal proceedings.

33                 E. Law enforcement agencies within a county may establish different  
34 procedures designed to efficiently and effectively provide notice of the  
35 victim's rights pursuant to this section and notice to affected entities of  
36 the victim request or waiver information. If different procedures are  
37 established, the procedures shall:

38                 1. Be reported to the entities within a county affected by the  
39 procedures and reported to the attorney general.

40                 2. Be designed so that custodial agencies and prosecutors within a  
41 county receive notice of the victim's request or waiver of the victim's  
42 preconviction rights at the same time that an adult suspect is arrested.

43                 3. Be designed so that prosecutors within a county receive notice of  
44 the victim's request or waiver of the victim's preconviction rights, if there

1 is no arrest, at the same time that the case is otherwise presented to the  
2 prosecutor for review.

3       4. Provide that the notice to affected entities of a victim's request  
4 or waiver of the victim's preconviction rights includes information that  
5 affords the affected entity the ability to contact the victim.

6       5. Be supported by use of brochures, forms or other written materials  
7 that are developed by the law enforcement agencies within a county and  
8 reviewed by the attorney general pursuant to section 13-4417, subsection B.

9       F. If a suspect has not been arrested at the time of contact with the  
10 victim pursuant to subsection A of this section, the law enforcement agency  
11 that is responsible for investigating the offense shall notify the victim of  
12 the arrest of a suspect at the earliest opportunity after the arrest and of  
13 the time, place and date for the initial appearance.

14       G. ON REQUEST OF THE VICTIM, THE LAW ENFORCEMENT AGENCY THAT IS  
15 RESPONSIBLE FOR INVESTIGATING THE CRIMINAL OFFENSE, SHALL REPORT TO THE  
16 VICTIM OR THE VICTIM'S LAWFUL REPRESENTATIVE THE STATUS OF THE INVESTIGATION  
17 UNLESS THE REPORT WOULD INTERFERE WITH OR COMPROMISE AN INVESTIGATION OR  
18 ARREST.